IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 05-08-2005

CORAM

THE HONOURABLE MR.JUSTICE M.KARPAGAVINAYAGAM
AND
THE HONOURABLE MR.JUSTICE S.ASHOK KUMAR

WRIT PETITION No.24430 OF 2004

Ms.A.Arulmozhi ... Petitioner

-vs-

1.The Government of India,
rep.by Secretary to Government,
Ministry of Information and Broadcasting,
New Delhi.

2.The Central Board of Film Certification,
rep.by its Regional Officer,
35, Haddows Road,
Shastri Bhavan,
Chennai- 600 006.

3.S.Annai Mari Madha Creations,
rep.by Sammanasu Pandian,
18, ID Jamal Apartments,
Nellaganda Metha Street,
Chennai-600 017. ... Respondents

Petition under Article 226 of the Constitution of India, praying for issuance of a writ of mandamus.

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For petitioner : Mr.V.Ramasubramanian

For respondents 1 & 2: Mr.S.Manikumar,
Senior Central Government
Standing Counsel.

For respondent 3 : Mr.Ezhilmani

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O R D E R

M.KARPAGAVINAYAGAM,J.

Tamil feature film "New", produced by Annai Mari Madha Creations, third respondent herein, was released for public exhibition in the second week of July,2004, throughout Tamil Nadu.

2. Ms.Arulmozhi, an advocate practising in this Court, after seeing the movie, wondered as to how the film was certified for public exhibition by the Central Board of Film Certification, even though the film was full of dual meaning dialogues and obscene visuals, appended by vulgarity and depravity, obviously catering to the baser instincts of the viewers. As the certificate for public exhibition had been issued in gross violation of the provisions of the Cinematograph Act,1952, she sent a representation to the Government of India, the first respondent herein, on 23.08.2004, bringing to its notice about the violations, requesting to revoke the certificate, by invoking the revisional powers under Section 6 of the Cinematograph Act. Since she felt that the action on representation may take some time and if such time is allowed the film would be continued to be screened thereby causing imminent danger to the public morality and unable to bear the cultural degradation due to this film, she has rushed to this Court and filed this Writ Petition.

3. The main prayer in this Writ Petition is for issuance of a writ of mandamus, directing the Government of India, Ministry of Information and Broadcasting, New Delhi, first respondent herein, and the Central Board of Film Certification, Sastri Bhavan, Chennai, second respondent herein, to revoke the Censor Certificate for public exhibition, issued to the Tamil Feature Film "New", produced by S.Annai Mari Madha Creations, the third respondent herein.

4. Mr.V.Ramasubramanian, learned counsel for the petitioner, seeking for a mandamus for revocation of the Censor Certificate issued to the film, would submit as follows :

"(a) The theme of the picture is about a child of 8 years age being put to scientific tests, thereby getting transformed to the youth of 28 years only during nights and getting married to a girl of 20 years of age and begetting a child. There are several scenes in the film, which are vulgar and obscene, which cater to the baser instincts of men. The countless number of dual meaning dialogues in the film show the sexual perversions and the use of a child artist in the lead role depicts child abuse. The second respondent has sanctioned the public exhibition of the film, unmindful of the evil influence that it could have on young minds.

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(b) The scenes in the film depict indecency and vulgarity and consequently the obscenity would make the film liable for revocation of the certificate. Under Section 5 B(1) of the Cinematograph Act,1952, a film shall not be certified for public exhibition by the competent authority, if the film or any part of it is against public order, decency or morality.

(c) Under Section 5 B (2) of the Act, the Government of India issued some guidelines for ensuring the Board of Film Certification to find out the fitness for issuance of the said certificate. Under these guidelines, the Board of Film Certification shall ensure that the scenes depicting the child abuse, vulgarity, obscenity or depravity and the dialogues giving the dual meaning, catering to the baser instincts, are not allowed in the film. In other words, these guidelines mandate the Censor Board to ensure that human sensibilities are not offended by vulgarity and obscenity or depravity and that such dual meaning words, which cater to the baser instincts, are not permitted to be screened.

(d) The entire story-line of the film is about an eight year old boy becoming a youth by scientific adventure and, during nights, he makes love with a girl of 20 years, getting married to her and begetting a child. Thus, the very theme of the film offends the human sensibilities by its vulgarity and indecency. Therefore, respondents 1 and 2 may be directed to withhold the certificate."

5. On the other hand, Mr.S.Manikumar, learned Senior Central Government Standing Counsel, appearing for respondents 1 and 2, would submit the following, by way of reply :

"(a) The Examining Committee, comprising four Members and an Examining Officer, examined the film by strictly applying the guidelines under Section 5 B of the Act and recommended for grant of 'A' Certificate to the film, subject to deletions of the objectionable portions, and restricted it to adult audience of 18 years and above.

(b) Though the film contains such sexually coloured remarks and adult oriented dialogues and visuals, the Board allowed such things, keeping in mind that the adults or matured persons can be permitted to view with some restrictions, without unduly curbing the freedom of the film-maker, especially when the Committee felt that the innovative ideas and the theme of the film have to be encouraged. As such, issuance of certificate cannot be said to be in violation of the mandatory provisions."

6. Mr.Ezhilmani, representing Mrs.Maheswari, learned counsel on record for the third respondent/film producing agency, defending the issuance of certificate, would submit as follows :

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"The Writ Petition is not maintainable, especially when a representation dated 23.08.2004 has been sent by the petitioner to the first respondent and since the scenes and the dialogues in the film go with the story-line, the second respondent issued Censor Certificate with restricted exhibition by giving 'A' Certificate, after suggesting for deletions of some portions of the film, and, accordingly, the suggested cuts have been implemented in total compliance of the orders of the authority and the intention of making a film is to entertain the masses and, therefore, the third respondent's right to freedom of expression through the film cannot be stifled."

7. In this context, it is to be stated that even before the commencement of the arguments made by the learned counsel for the parties, the movie was specially screened for us in a preview theatre on the date fixed and we saw the movie along with the learned counsel for the parties.

8. On the date of next hearing, we heard the learned counsel for the parties at length. They also cited a number of authorities, to substantiate their respective pleas.

9. Learned counsel for the petitioner would cite the following authorities :

(i) 1989 WRIT LAW REPORTER 170 (S.RANGARAJAN v. P.JAGJIVAN RAM & OTHERS);

(ii) AIR 1990 ANDHRA PRADESH 100 (B.K.ADARSH v. UNION OF INDIA AND OTHERS); and

(iii) 1994 WRIT LAW REPORTER 835 (CENTRAL BOARD OF FILM CERTIFICATION v. YADAVALAYA & ANOTHER).

10. Learned Senior Central Government Standing Counsel, appearing for respondents 1 and 2, would cite the following authorities :

(i) 1970 (2) SUPREME COURT CASES 780 (K.A.ABBAS v. THE UNION OF INDIA AND ANOTHER);

(ii) 1980 (1) SUPREME COURT CASES 43 (RAJ KAPOOR AND OTHERS v. STATE AND OTHERS);

(iii) 1985 (4) SUPREME COURT CASES 289 (SAMARESH BOSE AND ANOTHER v. AMAL MITRA AND ANOTHER);

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(iv) 1989 (2) SUPREME COURT CASES 574 (S.RANGARAJAN v. P.JAGJIVAN RAM AND OTHERS);

(v) 1996 (4) SUPREME COURT CASES 1 (BOBBY ART INTERNATIONAL AND OTHERS v. OM PAL SINGH HOON AND OTHERS); and

(vi) AIR 2002 PUNJAB AND HARYANA 25 (SANT ESHAR SINGH v. UNION OF INDIA AND OTHERS)

11. Learned counsel for third respondent would cite the authorities, as given below :

(i) 1998 (3) SUPREME COURT CASES 410 (ODYSSEY COMMUNICATIONS PVT. LTD. V. LOK VIDAYAN SANGHATANA AND OTHERS); and

(ii) 1992 (3) SUPREME COURT CASES 637 (LIFE INSURANCE CORPORATION OF INDIA V. PROF.MANUBHAI D SHAH)

12. We have carefully considered the submissions made by the learned counsel for the parties and perused the records and the rulings.

13. The core of the matter centres around the following questions :

(1) Whether the film "New", which is in question, is produced in accordance with the guidelines issued under Section 5 B of the Cinematograph Act,1952 ? ;

(2) whether the Censor Certificate, issued by the second respondent/Central Board of Film Certification, is in consonance with the provisions of the Act ? and

(3) Whether this Court could issue mandamus, directing the respondents 1 and 2 to revoke the Censor Certificate, issued to this film for public exhibition ?

14. Let us, at the outset, look into the salient features and relevant provisions of the Act, which deal with the conditions for issuance of Censor Certificate to a film for public exhibition.

15. The Cinematograph Act,1952, was enacted to make the provisions for certification of cinematograph films for exhibition and for regulating the exhibitions. For the purpose of examination of

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films, for public exhibition, the Central Government constituted a Board called as Board of Film Certification, which consists of Chairman and other members.

16. The procedure of examination and certification is dealt with in Section 5 B of the Cinematograph Act,1952. Under Section 5-B (1), a film shall not be certified for public exhibition if, in the opinion of the competent authority to grant the certificate, the film or any part of it is against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or involves defamation or contempt of court or is likely to incite the commission of any offence. Under Section 5-B(2), subject to the provisions contained in sub-section (1), the Central Government may issue such directions as it may think fit setting out the principles which shall guide the authority competent to grant certificates under this Act in sanctioning the films for public exhibition.

17. Although freedom is a constitutional right falling under Article 19 (1) of the Constitution of India, which says that all persons shall have freedom of speech and expression, this right is subject to reasonable restrictions on the grounds set out in Article 19 (2) of the Constitution. In other words, even though the basic principle in certifying the freedom of film-maker is not curtailed, it is restricted within the reasonable restrictions under Article 19 (2) of the Constitution, by empowering the Central Government to issue directions to the Board to follow the general principles, while granting the Censor Certificate. In furtherance of this power, the Central Government has given directions to the Board of Film Censors. They are divided into general principles three in number and are quoted as follows :

> (1) No picture shall be certified for public exhibition which will lower the moral standards of those who see it.
>
> (2) Standards of life, having regard to the standards of the country and the people to which the story relates, shall not be so portrayed as to deprave the morality of the audience.
>
> (3) The prevailing laws shall not be so ridiculed as to create sympathy for violation of such laws.

18. On the basis of these principles, guidelines were framed, in exercise of the power conferred by sub-section (2) of Section 5-B of the Cinematograph Act,1952. The guidelines, which are relevant for this case, are given below:

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Section 5(B)(2) :

1. The objectives of film certification will be to ensure that -

(a) the medium of film remains responsible and sensitive to the values and standards of society.

(b) xxxx

(c) xxxx

(d) medium of film provides clean and healthy entertainment; and

(e) as far as possible, the film is of aesthetic value and cinematically of a good standard.

2. In pursuance of the above objectives, the Board of Film Certification shall ensure that-

(i) xxxx

(ii) xxxx

(iii) scenes-

(a) showing involvement of children in violence as victims or as perpetrators or as forced witnesses to violence, or showing children as being subjected to any form of child abuse;

(b) xxxx

(c) xxxx

(iv) xxxx

(v) xxxx

(vi) xxxx

(vii) scenes tending to encourage, justify or glamorize consumption of tobacco or smoking are not shown ;

(viii) human sensibilities are not offended by vulgarity, obscenity or depravity;

(ix) such dual meaning words as obviously cater to baser instincts are not allowed ;

(x) scenes degrading or denigrating women in any manner are not presented.

3. The Board of Film Certification shall also ensure that the film-

(i) is judged in its entirety from the point of view of its overall impact; and

(ii) is examined in the light of the period depicted in the film and the contemporary standards of the country and the people to which the film relates, provided that the film does not deprave the morality of the audience.

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19. A reading of the above guidelines issued by the Government of India, in exercise of the power conferred under Section 5-B(2) of the Act would clearly indicate that a mandate has been issued to the Censor Board to ensure that the medium of film should remain responsible and sensitive to the moral values and standards of society, giving a clean and healthy environment and, at any cost, the human sensibilities are not offended by obscenity or depravity and that such dual meaning words as obviously cater to baser instincts and such scenes showing the children as being subjected to any form of child abuse are not allowed in the film.

20. The guidelines aforementioned have been carefully drawn. They require the authorities concerned that the film certification to be responsive to the values and standards of society and take note of social change. They are required to ensure that the artistic expression and creative freedom are not unduly curbed and the film must be judged in its entirety from the point of view of its overall impact. It must also be judged in the light of the period depicted and the contemporary standards of the people to whom it relates, but it must not deprave the morality of the audience.

21. With these legal parameters in mind, we have to look into the theme, content, dialogues, songs and dance sequences in the film "New", which is in question, in order to find out whether the statutory provisions and guidelines have been violated, so as to give a direction to the authority concerned to revoke the certificate.

22. Before proceeding further into the point in issue, let us now look into the synopsis of the story of this film "New":

> "An eight year old boy by name Pappu is the son of Sanjay Swaroop and Indira. Pappu has an elder brother and a friend Deepak. Pappu's mother used to invariably scold Pappu and punish him for his mischievous activities every now and then. One day, when Pappu takes off the fuse in the electric meter, the entire house becomes dark. On noticing that Pappu was responsible for the same, he was scolded by his mother and everybody. Feeling disgusted that he was hated by his mother and others, Pappu went out of the house and attempted to commit suicide. In that city, two scientists, namely, Alwa Odison and Sir CV were living. They were interested in new inventions. The scientists incidentally came to the spot, where the boy attempted to commit suicide and, on seeing his attempt, both of them saved him and took him to their house. Then, due to their scientific adventure through a medicine, he was made a man of 28 years and he was renamed as Vichu. He got a job in a doll factory. Priya, daughter of the owner of the factory, was loving Vichu, but Vichu was unable to understand the said

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love. Seema, Priya's friend, gave her various ideas for testing the manliness of Vichu. All the tests proved that Vichu was childish. Priya made up her mind and started loving Vichu strongly and ultimately married him. In the meantime, Vichu came to know that his mother (Pappu's mother) was bedridden. He went and visited his mother, without divulging his identity. Then only, he came to know that mother was loving him so much and because of his separation, she got bedridden. Then, Vichu pleaded the scientists to transform him back as Pappu, an eight year old boy. Accordingly, they commenced the transformation test. When they transformed, the scientific test did not succeed fully and, consequently, he became the boy only in the day time and, during night time, he continued to be a man of 28 years. As Pappu, he went to his home and spent the time with his mother. During day time, he goes to school. During night hours, he comes to Priya's house and behaves as the husband of Priya. In the meantime, his friend Deepak found out the secret and informed his parents. The years passed by. There was no remedy for Vichu. Then, Pappu, the boy, became a man in the day time and old man in the night hours." This is the gist of the story.

23. The main contention put forth by the learned counsel for the petitioner is that the entire story line of the film is about an eight year old boy becoming a man of 28 years (by scientific misadventure) only during nights exclusively for the purpose of making love with a girl of 20 years, getting married to her and begetting a child and, as such, the very theme of the film offends human sensibilities by its vulgarity and sexual perversions. It is further contended that the public order, decency and morality are emphasised in Section 5-B(1) and the requirement of guidelines given under Section 5-B(2) is that the theme should remain responsible and sensitive to the values and standards of the society and the scenes of obscenity, vulgarity, dual meaning dialogues catering to the baser instincts and the scenes of sexual abuse of children, which are not to be permitted, have been thrown to the winds by the very theme and contents of this film.

24. While considering the question whether the theme of the film offends the human sensibility, it would be better to look into the various scenes pointed out by the learned counsel for the petitioner through the separate typed set of papers furnished through Annexure 'A', to see whether those scenes would depict obscenity, vulgarity through visuals and dual meaning dialogues, catering to the baser instincts of the viewers.

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25. At this juncture, we have to take note of the purport of the guidelines issued by the Central Government under Section 5-B(2) and also the duties of the Board and the Courts, as pointed out by the Supreme Court in the various decisions cited supra, while deciding the fitness of the film for certification, as under :

> (i) The standard to be applied by the Board or Courts for judging the film should be that of an ordinary man of common sense and prudence and not that of an out of the ordinary or hypersensitive manner. The concept of obscenity would differ from country to country, depending on the standards of morals of contemporary society. What is considered as a piece of literature in France may be obscene in England and what is considered in both countries as not harmful to public order and morals may be obscene in our country. The Court must take an overall view of the matter complained of as obscene in the settling of the whole work, but the matter charged as obscene must also be considered by itself and separately to find out whether it is so gross and its obscenity so pronounced that it is likely to deprave and corrupt the viewers, whose minds are open to influence of this sort; and
>
> (ii) In judging the question of obscenity, the Judge, in the first place, should try to place himself in the position of the author of the film. From the viewpoint of the author of the film, the Judge should try to understand what is it that the author seeks to convey and what the author conveys has any literary and artistic value. The Judge should thereafter place himself in the position of a viewer and should try to appreciate what kind of possible influence or impact the film is likely to cause in the minds of the viewers. Thereafter, the Judge should apply his judicial mind dispassionately to decide whether the film in question can be said to be obscene."

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26. Bearing the above principles laid down in mind, we looked at every scene in the film. As already stated, the film has been specially screened for us and, as such, taking overall view of the entire sequences of the film and theme, we now go into some of the scenes to find out whether there is any child abuse or obscenity with dual meaning dialogues, catering to the baser instincts of the viewers.

27. In the Annexure 'A', the petitioner has given 29 sequences with details of the dialogues. Let us now deal with the selected scenes out of those sequences, one by one:

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(1) In the introductory scene, a dog with two tails is shown. The growth of the two tails in a dog is the creation of a scientist. When the scientist is questioned about the purpose of two tails, he replies with sarcastic smile that he wanted to make some other part of the body double, but could make only the tail double.

(a) According to the learned counsel for the petitioner, by this dialogue, the author of the film wanted to convey to the audience that the scientist wanted to create two private parts, but he could make only the tail double.

(b) Learned counsel for the third respondent would explain that it was not the private part which the scientist had in mind and what was to be doubled according to him was the head, as the life revolves around head and tail and, ultimately, what was possible for him was only the tail.

(c) If this explanation is true, the author of the film could very well make the scientist to say that he tried to make the head double. But, he has not chosen to it. On the other hand, he omitted to mention the part, which was to be doubled, and gives a peculiar and sarcastic smile to make the audience infer that the part he mentioned was only the private part of the body. Hence, the argument made by the learned counsel for the petitioner cannot be rejected as untenable.

(2) In the next sequence, a small coconut tree is shown in the scientist's laboratory. The Income Tax Officer, who came there on noticing it, questioned the scientist as to why the coconut tree is made as small. Then, the scientist's friend says that their experiment itself is making small things big and big things small. On seeing his reaction with smile, the scientist and his friend with a smile remark "we know what you want to make big?". Pointing out this scene depicting the insinuating smile given by the Income Tax Officer by raising his eyebrows, the author wanted to convey the news to the audience through the scientist and his friend that the Income Tax Officer thought about some other part of the body to be made as big.

(a) According to the learned counsel for the petitioner, the insinuating smile of the Income Tax Officer and the remarks made by the scientist and his friend were made as a sequence in the film in order to make the audience to imagine about some other part of the body, thereby portraying vulgarity and catering to the baser instincts of the audience.

(b) In reply to the same, it is submitted by the learned counsel for the third respondent that the instruments used in every field are made as small; dwarf trees, bonsai etc. have been discovered by scientists and, as such, it does not convey any other meaning.

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(c) This reply is not convincing, especially in the absence of any explanation as to why the scientist and his friend remarked, saying "we know what you want to make big ?", with peculiar smile.

(3) All songs contain vulgar words. The song "spiderman" contains the following words :

எட்டுக் கால் பூச்சி போல் உடம்பில்
ஊறுகிறான். இன்னும் கொஞ்சம் கீழே.....கீழே

(a) According to the learned counsel for the petitioner, the meaning of the lyrics on the song is heroine telling the hero to become like an eight legged insect and walk through her entire body and asking him to go below, still below and still more below, which conveys vulgarity and obscenity.

(b) In reply to the same, learned counsel for the third respondent would submit that the song has been penned by the greatest lyricist Mr.Vairamuthu and, as this is the imagination of the heroine, there is no trace of vulgarity.

(c) This reply is quite strange. There is no explanation by the learned counsel for the third respondent as to why the heroine asks the hero to become like an eight legged insect and walk through her body and to go below and below and still more below on the body, which would convey, according to the learned counsel for the petitioner, the thing of obscenity to the viewers. Hence, it is to be taken that the song has been written purposely to exhibit vulgarity.

(4) The next sequence is the conversation between the heroine and her lady friend. Both of them are shown only with towels on the body. The girl friend teaches the heroine as to how to tempt the hero. She says that appropriate parts of her body in the right proportion are to be exposed, to tempt a man. To show this scene, the camera is placed in a particular position to show the heroine from the angle of the two exposed legs. While teaching, the lady friend is shown smoking a cigarette.

(a) In the film, the girl friend smoking a cigarette is not shown as a bad character, but the advice given by her to heroine to attract and tempt the hero by showing the inner parts of the body in the right proportion. The heroine is shown to the audience from the angle of the exposed legs.

(b) This scene indicates not only the girl friend giving ideas to heroine to expose her body to hero to tempt him, but also tempting the audience by showing her exposed legs, by smoking a cigarette.

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(c) There is no reason as to why the girl friend, who is close to the heroine, should be shown as a cigarette smoking girl. This conveys a message that a girl can also smoke cigarette and suggest ideas to her friends as to how to expose their body to tempt a man and to arouse his sexual feelings.

(d) According to the learned counsel for the petitioner, this scene is not only obscene, but also teaching bad ideas to the audience, that too to the lady audience. It is nothing but a wrong idea given to the heroine by a woman smoking cigarette, while advising her friend, which is a degradation of culture and moral depravity. The message given to the lady audience is quite dangerous.

(e) In reply, it is the contention of the learned counsel for the third respondent that though the character is a smoker, as per the guidelines of respondents 1 and 2, the act of smoking is not shown in the visuals.

(f) This is not factually correct. When we saw the movie, which was screened for us, we saw the scene, wherein the girl was smoking, giving ideas to tempt a man. In our view, as stated above, the message given to lady audience would lead to cultural degradation.

(5) In the next scene, the heroine, by her gesture, tempts the hero, as per the advice of the smoking girl friend.

(a) According to the learned counsel for the petitioner, the entire sequence where the heroine attempts to seduce the hero by removing her saree from the upper portion of the body is nothing but a vulgar display of sexual perversion. When hero meets the heroine, she suddenly removes her saree from the upper portion of the body, showing the entire breast portion to the audience. At that time, the hero looks at the breast and finds a whistle, which is tied with a rope around the neck of the heroine. Then, exchange of dual meaning dialogues follows. The hero comes near the heroine and says "I want to do it once". Then, heroine asks him to wait till the marriage. The hero then says, since he has seen it, he cannot control. The heroine says that she showed it to make the hero to get mood. Then, hero says "ஒரு தடவை கொடு..... என்ன சவுண்டு கொடுத்து அடிக்கிறேன் பாரு. கல்யாணத்துக்கு அப்பறம் நிறைய தடவை அடிக்கலாம். சின்ன விசில் .... தூக்கி அடிக்கனும். " (Give only once. See, How I am blowing with heavy sound. We may whistle several times after marriage. Small whistle... It should be whistled forcibly). The whole dialogue in the entire sequence is a dual meaning dialogue. The author of the film wanted the hero to convey the message to the heroine that the hero wanted to have sexual intercourse with her only once, that too immediately, as he has seen the breast portion of the body, but she refused to have intercourse with him, as he could do it after marriage. But, the dialogues were written in such a way as if the hero wanted an

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opportunity to blow the whistle, which was hanging around the neck of the heroine.

(b) The reply for this is that the scene is a comedy and similar comedy scenes have come in other movies.

(c) This reply is totally unacceptable, in view of the fact that the dialogues are admittedly dual meaning dialogues. The dialogues made by the hero would clearly indicate that he wanted to have intercourse with the heroine at least once, saying that he could not control, as he had seen the breast portion of the body. Merely because similar scenes are found in some other movies, dual meaning dialogues, depicting vulgarity in this movie, cannot be allowed, as these were written in such a way to motivate the audience to baser instincts.

(6) In the next scene, the boy of eight years was travelling with his mother in an auto-rickshaw. On the way, they found the heroine, waiting for a taxi. On being given lift to her in the auto, she gets into the auto and makes the hero i.e., the boy of eight years, sit in her lap.

(a) In this sequence, the heroine's breast is shown in close up not only to the audience, but also to the eyes of the boy. The camera is placed to show the boy giving a look at the breast portion, which is very closer to him, and, on seeing the big breast portion, raising his eyebrows in exclamation.

(b) According to the story, the boy of eight years does not have any adult feeling. The heroine, without knowing that the boy is a hero in night times, took him and put him in her lap, while travelling in the auto, to enable the mother of the boy to sit comfortably.

(c) When the boy is of eight years, there is no reason for the boy to give a look at the breast portion of the heroine and to express the adult feelings, by raising his eyebrows in exclamation.

(d) According to the learned counsel for the third respondent, the heroine was wearing a T-Shirt with a cowboy picture and the boy saw only the cowboy, drawn on T-Shirt.

(e) This explanation is quite childish and monstrous. The said scene does not convey that meaning. On the other hand, the boy of eight years, who had sexual connection with the heroine during night hours, had shown the adult feeling by raising his eyebrows in exclamation, giving a look at the close up breast portion. The message through this scene is that a boy of eight years, when he looks at the breast portion of the heroine while he was sitting in her lap, could experience the feeling of an adult, by raising his eyebrows to express his exclamation and exhilaration. Is it a healthy message ?

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Could it be said that this scene is in line with the theme of the story ? We have to emphatically say "Not at all".

(7) Nextly, the heroine invites the hero for sexual intercourse, by saying "உப்பு மூட்டை தூக்கலாம் வா " (let us lift the salt bag, come).

(a) In this sequence, the hero returns from his office and the heroine gives a sexual and romantic look. The hero, on noticing the look, says "நீ வேற ரூட்ல போற போலிருக்கே" (It seems, you are going in a different route!). Then, the heroine replies "உப்பு மூட்டை தூக்கலாம் வா" (let us lift the salt bag, come). The hero exclaims "இவ்வளவு சீக்கிரமா.– எனக்குப் பசிக்குது. (So early? I feel hungry.). Then, heroine says "எனக்கும்தான்," (Me too). Hero asks for 'food', as he is hungry. Then, heroine asks for sex, as she feels bodily hungry.

(b) The hero returns from office in the evening and the heroine openly asks him to come for sexual intercourse. The secret sentence for sexual intercourse is "lifting the உப்பு மூட்டை (salt bag)." What is the message conveyed through this scene to the audience, that too women ?

(8) The next sequence is the conversation between the scientist and the hero. The scientist tells his friend that hero has got two home works by saying "அவனுக்கு ரெண்டு homework(He has two homeworks)". One is school home work and the other is having sexual intercourse with the heroine". The scientist's friend tells the hero exclaiming, "நான் முப்பது வயசுல முழசா இன்னும் கண்ணால கூட பாக்கல... எட்டு வயசு பையன் இந்த போடு போடுறியே (Even though I am thirty years of old, I have not even seen these scenes fully. Being a boy of eight, you are able to perform these acts). Hero asks the scientist's friend as to what he was doing all the years. Then, the scientist's friend replies " நான் கைய வச்சு..... குச்சியால் ஆட்டிக்கிட்டு இருந்தேன் " (I placed the hand ... shaking with the stick). This dual meaning dialogue also conveys a bad meaning.

(9) The next scene is the conversation between the doctor and the hero. The hero explains to doctor as to how he used to have intercourse with his wife, by placing his palm of one hand over the other and telling him how he had intercourse with his wife on the bed. When the doctor shows similar display, by placing the upper hand over the other to hero, the hero swiftly corrects and explains to the doctor, saying, the upper hand is heroine and that he was lying on the bed and the heroine was lying on him. Then, the doctor remarks " பலே கைகாரியா இருப்பா போலிருக்கே" (She seems to be a very talented woman!).

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(a) This shows the hero openly telling the doctor as to how he had sexual intercourse with his wife and the doctor remarking that she was a superwoman, who overpowered him. The message conveyed to audience through this scene is not in good taste.

(10) The next obscene sequence is the introduction of second heroine, who has been introduced as a glamour character. The second heroine is a young girl, who is married to an old man of sixty years. She stays in the house, just opposite to the house of the hero. The second heroine comes and invites the hero to come to her house and attend the bhajan, by saying, "எங்க ஆத்துல பஜனை இருக்கு.....நீங்க வரலே–,,,.. உங்க பஜனைக்கு நான் என்ன பண்ணனும்.... வந்து மாட்டிட்டு போகனும். அதுக்கு மாமா இருக்காரே... அவருக்கு வயசாயிடுச்சு மாட்டட முடியாது.... பிரியா குளிச்சிட்டு இருக்கா... அதுக்குள்ள டக்கு டக்குன்னு நாலு மாட்டு மாட்டிட்டு",

Second heroine : We have bhajan at our home. Won't you come?
Hero : What should I do in your bhajan?
Second heroine : Please come, hang the hook and go.
Hero : For that, your husband (uncle) is there.
Second heroine :As he is aged, he cannot hang. As Priya is taking bath inside the house, please come to my house, hang the hook four times and then go back quickly.

(a) When the above conversation was going on, the heroine comes and asks the second heroine as to why she called her husband to her house (உன் வீட்டு பஜனைக்கு என் புருடினை ஏண்டி கூப்பிட்ட... மாமாவுக்கு வயசாயிடுச்சு இல்லியா... அவரால மாட்ட முடியாது.).

Heroine : Why do you call my husband for the Bhajan at your home?

Second heroine : My husband (uncle) is aged. Isn't it? So, he cannot hang the hook.

(b) According to the learned counsel for the petitioner, this is nothing short of vulgarity. We are constrained to agree with him, as, in our view, this scene has been purposely picturised to make the audience enjoy the dual meaning vulgar dialogues.

(11) In the next scene, the hero is in the house of second heroine. The hero is shown rolling over the second heroine. The hero's head is placed on the breast of the second heroine and the shot is shown in close up. It is pointed out that the entire conversation between the hero and the second heroine is full of dual meaning dialogues, conveying vulgarity and obscenity.

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(a) As per the story, the hero comes to the second heroine's house for bhajan in the new house. She wants him to help to put a hook on the wall for hanging several photos of Gods. He stands on a stool and tries to put the nails on the wall. The second heroine stands near the stool. At that time, the hero accidentally slips down from the chair and falls on the heroine, lying on the floor and embracing her, and both of them are found rolling over. In the rolling scene, it is shown as if the chain in the neck of the hero hooked with the chain of the second heroine. This scene is shown for a considerable time. The scenes and the conversation between them at that time are shown as if they indulged in sexual intercourse. This is nothing but a total vulgarity.

(b) The most vulgar and obscene scenes in the picture have been introduced under the guise of introducing a character of twenty year old girl, second heroine, who is the wife of a sixty year old man. The entire sequence dialogues have been picturised in such a way as to spoil the youth audience, catering to the baser instincts.

28. As pointed out by the learned counsel for the petitioner, the last scene is a clear example for the child abuse. In that scene, the heroine is admitted in maternity hospital for delivery and the eight years boy is seen walking from this side to that side inside the hospital with an anxious mood to know whether there will be a safe delivery by the heroine, his wife. Further, after delivery, a nurse comes out of the labour room and shakes the hands of the boy, congratulating that he has become a father. Then, he expresses the feeling of happiness of a father. As such, it cannot be said that the character of the child of eight years is depicted as a sincere and innocent boy. This is nothing but child abuse.

29. Defending the issuance of Censor Certificate, learned counsel for the third respondent, in support of respondents 1 and 2, would submit that the scenes and dialogues in the film go with the story-line and the main intention of making the film is to entertain the masses; the similar scenes which are alleged to be obscene have been censored and shown to the public in films like Idhaya Kani, Mundhanai Mudichu and Sakala Kala Vallavan and when those scenes are compared to the scenes in the film in question, it can be demonstrated that the film "New" is in no way exceeding any of the standards. It is further contended that in celebrity temples, there are sculptures depicting the essence of kamasutra and in the context of globalisation, the very concept of censorship is increasingly becoming meaningless; with the free use of satellite communication facilities, the media has become an integral part of every household; very many foreign films are telecast everyday freely and all the members of the family have an easy and free access for the said films. These films are coming from countries, where the Censor Board of that country rates a film and permits exhibition of the same without any cuts; free censor is the result of globalisation and India cannot shy away the global trend and use scissors for controlling expression.

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30. The above submission by the learned counsel for the respondents, in comparison with foreign films, that all the scenes are in line with the theme of the film and they are not vulgar at all cannot be accepted, as, in our view, most of the scenes depict total vulgarity and obscenity with dual meaning dialogues, catering to the baser instincts of the audience.

31. As indicated above, it is strenuously contended that similar scenes in this film, which are alleged to be obscene, have been censored and shown to the public in various other films and when those scenes are compared to the scenes in the film in question, the film "New" is in no way exceeding any of the standards.

32. The said contention cannot be countenanced for the reason that mere grant of certification to other films, which have more or similar obscene or pornographic scenes or events or sequences, does not automatically entitle a producer like the third respondent to a certification under Section 5-A. It is the particular film that needs certification alone has to be viewed and if it is found to be in conformity with law, then alone, it is entitled to a certification under Section 5-A.

33. It is the duty of the Court to consider in each case whether a particular motion picture is obscene or not. Merely because the Censor Board has not followed the guidelines in the other films, it cannot be argued before a Court of law that the Court has to acknowledge or endorse the mistakes committed by the Censor Board earlier.

34. Similarly, the contention of the Standing Counsel, appearing for the Censor Board, second respondent herein, is that the character of hero of 28 years is shown only as a matured man and he is performing adult oriented things, whereas the character of the child of 8 years is depicted as sincere, dedicated and affectionate boy and hence, there is no question of child abuse in the film. This submission also has to be rejected, as, so many scenes, mentioned earlier, projected the child abuse, as stated above.

35. As pointed out by the Supreme Court, the Censor Board should exercise considerable circumspection on movies affecting the morality or decency of our people and cultural heritage of the country, as the movies have unique capacity to disturb and arouse the feelings of the public. The moral values in particular should not be allowed to be sacrificed in the guise of social change or cultural assimilation. When promotion of art and culture is the primary underlying object, how can obscenity be allowed to be depicted. The Censor Board should step in firmly and insist that the film being released has a message meant to improve the values of life and should see that the film contains only such scenes which do not affect the values of life. The films should be of educative value and then only

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they can play an important role in subverting the interests of the society.

36. Cinema or a motion picture is a powerful media of expression. No one has an unbridled fundamental right to free expression to cater to the lowest common detriment of debase or pornographic scenes undermining the social fabric to degenerate cultural values. Exhibition of a motion picture with lascivious pornographic sceneries is not a free licence to a producer of a motion picture with a view to exhibit dirt for money's sake or to exploit people's weaknesses as a commercial venture to make money.

37. The Censor Board, while considering the issuance of certificate, must remember that the law against obscenity would protect the society and particularly young from the harmful consequences of the anti-social and commercial activities of the peddlers of pornographic material, which is devoid of any artistic, literary or scientific intention or purpose.

38. The Censor Board is duty bound to see the young and the impressionable are guarded against subtle machinations of pseudo artists and producers, as the young persons try to emulate or imitate what they have seen in the movies. What is the effect on the viewer of the picture, in particular on the young cine-goers, is a relevant factor. The motion picture must serve public good and it should not go beyond what it seeks to serve the public purpose.

39. In this context, it is worthwhile to refer to the observations made by the Supreme Court in 1989 (2) SUPREME COURT CASES 574 (S.RANGARAJAN V. P.JAGJIVAN RAM AND OTHERS), which are as follows :

> "Adi-guru Shankaracharya, Ramanujacharya, Madhwacharya, Chaitanya Maha Prabhu, Swami Rama Krishna Paramhamsa, Guru Nanak, Sant Kabir and Mahatma Gandhi have all enlightened our path. If one prefers to go yet further back, he will find "Tirukkural", the ethical code from Tiruvalluvar teaching, which is "a general human morality and wisdom". Besides, we have the concept of "Dharmam" (righteousness in every respect), a unique contribution of Indian civilization to humanity of the world. These are the bedrock of our civilization and should not be allowed to be shaken by unethical standards. We do not, however, mean that the censors should have an orthodox or conservative outlook..... All we wish to state is that the censors may display more sensitivity to motives, which will have a markedly deleterious effect to lower the moral standards of those who see it."

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40. If the above observations, giving the legal parameters that are to be taken into consideration for issuance of certificate outlined by the Supreme Court, are applied to the film in question, there is no difficulty for this Court to conclude that the theme, scenes, sequences and songs, depicting child abuse, vulgarity, obscenity and dialogues giving dual meaning, catering to the baser instincts of the public, which have been picturised purposely for arousing the sensual feelings of the public, especially the young, in the film "New" would violate the statutory provisions and guidelines and, as such, it has to be held that the film "New" has not been produced in accordance with the guidelines under the Cinematograph Act and that the Censor Certificate has been issued to this film by the Board with folded hands and blind eyes and, hence, the same is liable to be revoked.

41. Before concluding, this Court is constrained to deal with one another contention of the learned counsel for the petitioner, bringing to the notice of this Court some painful and startling features, which are as under :

"(i) The first team of members of the Censor Board, which viewed the film at the beginning, did not approve the film for certification. Subsequently, the sanction appears to have been obtained under questionable circumstances, at the intervention of the Chairman, CBFC, Mumbai. In the meeting, when some of the members, including a lady member of the Board, had refused to certify the film on the ground of obscenity, Mr.Surya, the Producer, picked up a quarrel with the lady member of the Board and made an attempt to assault and abused her. With reference to this, the said lady member lodged a police complaint and a case was registered.

(ii) The publicity materials of the film are required to be censored under the provisions of the Tamil Nadu (Compulsory Censorship of Film Publicity Materials) Act 25 of 1987. A Special Board is constituted under the said Act. If the publicity materials are obscene or against decency or morality, the said Board is obliged to refuse to grant certificate in respect of the publicity materials. However, the publicity materials of the film "New", which are not allowed to be screened by the Board, have been published, in violation of the provisions of the said Act.

(iii) The obscene sequences and clippings from the film, which are not censored, are freely telecast in all the television channels, enabling the children at home to view them and make the 'A' certificate meaningless. The State Government has not taken any action to stop the same, by virtue of the powers conferred in The Cable Television Networks (Regulation) Act. With regard to this, the Censor Board itself has lodged a complaint with the competent authority.

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(iv) The film was certified for restricted public exhibition to adults only. Mr.Surya, the Producer, violated the provisions of the Cinematograph Act,1952, by exhibiting in the theatre "Mayajal", as though the film was certified as U/A, thereby violating the conditions for grant of 'A' Certificate. There were also reports that uncensored portions of the film were shown in some theatres, which, again, is a violation."

42. While confirming the above irregularities, pointed out by the learned counsel for the petitioner, the Censor Board admitted most of them in the counter filed by it. The Board itself pointed out that the adult oriented scenes or songs from the 'A' rated films should not be carried in the cable service, since The Cable Television Networks (Regulation) Act prohibits the television channels from transmitting such signals. On noticing that the prohibited scenes were shown in television channels through the cable service, the Board wrote a letter to the Home Secretary, Government of Tamil Nadu, for taking action against the Producer under The Cable Television Networks (Regulation) Act,1995, but, no action was taken.

43. It is also admitted by the Censor Board in the counter that a private detective agency called Srinivasaa Entertainments was appointed by the Central Board of Film Certification Headquarters for detecting the violations of the provisions of the Cinematograph Act in the cinema halls. The said Srinivasaa Entertainments, on visiting the cinema halls and seeing the film "New", found the violations committed by the Producer. Srinivasaa Entertainments, immediately on the instructions given by the Censor Board, gave a complaint against the Producer to the police on 20.08.2004 about the exhibition of the film "New", in violation of the provisions of the Act. Consequently, the police took action and seized the print of the film "New" in Maruthi theatre, Padi.

44. Even before the clearance of the obscene song for public exhibition by the Board, the Producer started giving wide publicity through the media about the addition of the song in the film by way of vulgar photographs. The said detective agency detected this and, on behalf of the Censor Board, filed a complaint dated 06.08.2004 with the Joint Commissioner of Police, Chennai City, for taking action against the uncensored obscene visuals in the film by way of advertisement through the media. But, so far, the Board is not informed about the action taken by the State Government, under the Tamil Nadu (Compulsory Censorship of Film Publicity Materials) Act 25 of 1987.

45. It is also admitted in the counter affidavit that the uncensored obscene visuals in the film "New" were released by the media by way of advertisement and, with reference to this, a police complaint was lodged for taking action under the Tamil Nadu (Compulsory Censorship of Film Publicity Materials) Act 25 of 1987.

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46. It is further admitted in the counter that the adult oriented scenes and songs are not to be telecast in TV Channels, in view of the provisions of The Cable Television Networks (Regulation) Act, but, in this case, the television channels, in violation of the provisions of the Act, telecast the same liberally in the television channels. According to the Censor Board, though the implementing authority of the Act is the State Government, the police and the other authorities have not shown any interest in the implementation of the said Act, despite a complaint given by the Board.

47. In view of the serious allegations regarding the violations of the provisions of both the State Act and the Central Act by the Producer of the film and the conduct of the Producer, who is stated to have threatened the lady member of the Board by attempting to assault her, for which a criminal case was registered, as admitted by the Censor Board in its counter, we thought it fit to summon the entire records from the Censor Board/second respondent. Accordingly, the records were produced for our perusal. On going through the entire records, we are amazed to notice the details of several shocking events, which could be given in brief as under, in chronological order :

(i) The Regional Officer, Central Board of Film Certification, Chennai, received various complaints from several women associations, requesting to take action against the Tamil films, since the words used in lyrics are quite bad in taste and commonly misused for eve-teasing the girls and the same are shown indiscriminately in television channels during the prime time. Under The Cable Television Networks (Regulation) Act,1995, there is a prohibition for transmitting the adult films from 6.00 AM to 11.00 PM, to avoid the children viewing the said films. As it was found that the same was not followed by the television channels, the Regional Officer, CBFC, Chennai, sent a letter to the Home Secretary, Government of Tamil Nadu, Chennai, to take action against the private satellite channels through the authorised officers, namely, Collectors, Sub-Collectors and the Police Commissioners of the respective areas, but, there is no action yet.

(ii) Similar complaints were received by the Regional Officer that the film "New" publicity materials like posters, newspaper advertisements, video clippings, photographs etc. can be screened only after getting clearance from the State Government under the Tamil Nadu (Compulsory Censorship of Film Publicity Materials) Act 25 of 1987, and without getting clearance, the same were published. Further, the Regional Officer came to know that the publicity materials, which were not allowed in the film by the Censor Board, including songs, were released through audio cassettes and posters as a publicity measure. Therefore, the Regional Officer sent a letter to the Government to take action to prevent the violation of the provisions of the Tamil Nadu (Compulsory Censorship of Film Publicity

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Materials) Act 25 of 1987. Even though it was informed to the Government that the Censor Board officials were ready for discussion with regard to the action to be taken to prevent the illegal publicity materials, there is no response from the State Government.

(iii) On noticing the obscene and vulgar scenes in the film "New", the women groups, on behalf of All India Democratic Women Association, started an agitation against the said obscene scenes of the film on 26.07.2004. A memorandum was submitted to the Censor Board to review the matter and to take action against the Producer. A complaint was also lodged with the police. The Deputy Commissioner of Police, Mylapore, Chennai, sent a copy of the memorandum to the Regional Officer, Central Board of Film Certification, Chennai, requesting to take follow-up action. On 04.08.2004, on behalf of the same association, another memorandum was sent to the Censor Board, giving details of the obscene scenes and requesting to take action for removal of the scenes or for revoking the Censor Certificate. On receipt of these memos and letters, the Regional Officer, by his letter dated 28.07.2004, intimated to the Deputy Commissioner of Police that once a film is certified, the Censor Board cannot withdraw or re-censor the film and that the only option left to the party is to approach the competent Court, for revoking the Censor Certificate.

(iv) The Central Board of Film Certification appointed a private detective agency, by name, Srinivasaa Entertainments, to check up with the theatres, in which the film "New" is screened, whether the uncensored obscene scenes are screened and whether the publicity materials, which are prohibited, have been published through the advertisements. Srinivasaa Entertainments, on noticing the advertisements in Tamil dailies about the film "New", which contained an uncensored obscene visual, showing a man resting his face over the exposed breast of a scanty clad girl, reported the matter to the Censor Board, which, in turn, directed the agency to give a complaint to the police. Accordingly, on 06.08.2004, Srinivasaa Entertainments gave a complaint to the police, requesting to take action against the Producer, for the offences under Section 292 IPC and Section 7 of the Cinematograph Act. On receipt of this complaint, the Inspector of Police, R1 Mambalam Police Station, Chennai, wrote a letter to the Regional Officer, CBFC, Chennai, intimating the complaint given by Srinivasaa Entertainments about the film "New" and asking for the particulars, whether the obscene visual, showing a man resting his face over the exposed breast of a girl, is censored or not and also asking for further details. Immediately, a reply was sent by the Regional Officer to the Inspector of Police, R1 Mambalam Police Station, Chennai, stating that it was an uncensored visual and, even then, it had been advertised and also intimating that, only on their behalf, a complaint was given by Srinivasaa Entertainments.

(v) After the release of the film, the Producer wanted the addition of a song sequence. Therefore, the Chairman, CBFC, Mumbai, issued an order, directing the Regional Office at Chennai, to enquire

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Mr.Surya, the Producer, by issuing necessary notice. On that basis, he was summoned to come and appear before the Board at Chennai on 12.08.2004. When it was brought to the notice that he carried out only one cut among the 18 cuts suggested, Mr.Surya compelled both Mr.A.Dhanasekaran, Assistant Regional Officer and Mrs.Vanathi Srinivasan, lady member of the Advisory Panel Board, to talk to the Officer at Central Board of Film Certification, Mumbai, immediately, in his presence over cell phone and both the officers refused to do the same. On the other hand, they insisted that the earlier suggested cuts have to be carried out. On this, Mr.Surya, the Producer, got infuriated and threw away his cell phone vigorously towards the head of Mrs.Vanathi Srinivasan and he also made an attempt to break the glass panels at the room. Then, the staff members immediately rushed to the room and took him away to avoid any damage to the public property. With reference to this, Mrs.Vanathi Srinivasan, lady Panel Member, lodged a complaint with Sashtri Bhavan Police Station on 13.08.2004 against Mr.Surya, after getting permission from the Chairman, CBFC, Mumbai Then, an F.I.R. was registered in Crime No.1462 of 2004 on the file of F-3 Nungambakkam Police Station, Chennai, against Mr.Surya, for the offences under Sections 336,353 and 354 IPC. But, so far, no information is given by the police with regard to the criminal cases registered against Mr.Surya, on the complaints of Srinivasaa Entertainments and Mrs.Vanathi Srinivasan.

48. From the above materials, the following points are clear :

(1) Under The Cable Television Networks (Regulation) Act, 1995, the transmission of adult rated films are prohibited in television channels from 6.00 AM to 11.00 PM, to avoid the children viewing the said films. Despite the existence of the said Act, those films have been shown indiscriminately in television channels during prime time. Several women associations sent complaints after complaints to the State Government and the Censor Board about the same. The Regional Officer, CBFC, sent a letter to the Home Secretary, Government of Tamil Nadu, Chennai, to take action against the private satellite channels under the Act, through the authorised officers, namely, Collectors, Sub-Collectors and Commissioners of Police of the respective areas. So far, there is no action.

(2) Under the Tamil Nadu (Compulsory Censorship of Film Publicity Materials) Act 25 of 1987, the film publicity materials like posters, newspaper advertisements, video clippings, photographs etc. can be screened only after getting clearance from the State Government. But, the publicity materials for the film "New", even without clearance from the State Government, were released through audio cassettes and posters. The other publicity materials, which were not allowed in the film by the Censor Board, were also released. Women associations and the public sent complaints to the Censor Board. The Regional Officer, on receipt of those complaints, sent a letter to the State Government, to take action against the Producer of the film

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"New", to prevent the violations of the provisions of the Tamil Nadu (Compulsory Censorship of Film Publicity Materials) Act 25 of 1987. So far, there is no action from the State Government.

(3) All India Democratic Women Association started an agitation and sent a memorandum, complaining about the obscene scenes in the film, to both the Censor Board and the police on 26.07.2004 and 04.08.2004. The higher police officer contacted the Regional Officer of the Board with regard to this complaint and the Regional Officer intimated to the Deputy Commissioner of Police that the Censor Board cannot re-censor the film and the parties can be directed to approach the competent Court.

(4) The Censor Board appointed Srinivasaa Entertainments, a private detective agency, to find out, whether the uncensored obscene scenes are screened in the film "New" in various theatres. The said agency found not only the uncensored obscene scenes being screened in the theatres, but also noticed the advertisements in Tamil dailies about the film "New", which contained uncensored obscene visuals. Both the detective agency and the Regional Officer of CBFC, Chennai, gave complaints on 06.08.2004 and 13.09.2004 to the police that the obscene advertisements given in Tamil dailies are uncensored and some of the obscene scenes in the film, screened in the theatres, are also uncensored. On receipt of this complaint, R1 Mambalam Police, Chennai, registered a case against the Producer of the film, for the offences under Section 292 IPC and Section 7 of the Cinematograph Act. However, so far, no further action has been taken.

(5) In an enquiry, with regard to the request for addition of one more song in the film "New", Mr.Surya, the Producer, rudely behaved with the Assistant Regional Officer and Mrs.Vanathi Srinivasan, lady member of the Advisory Board, and abused both the officers. When Mrs.Vanathi Srinivasan did not oblige Mr.Surya, he threw away his cell phone vigorously towards the head of the lady member and also caused damage to the glass panels of the room. After obtaining permission from the Head Office, the said Mrs.Vanathi Srinivasan gave a complaint to Sashtri Bhavan Police on 13.08.2004 and a case was registered against Mr.Surya in Crime No.1462 of 2004 on the file of F-3 Nungambakkam Police Station, Chennai, for the offences under Sections 336,353 and 354 IPC. There is no further action so far.

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49. From the discussions made in the earlier paragraphs, we arrive at the following conclusions and issue the consequential directions :

(1) Though it is objected as to maintainability of the Writ Petition on the ground that a representation has been sent to the authority concerned for invoking revisional powers under Section 6 of the Cinematograph Act, the said objection is not a valid one, especially when an intimation has already been given to the police

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authorities and the persons concerned that the authority cannot review the same under Section 6 of the Act and it is open to the parties to approach the Court of Law for revocation.

(2) There are several scenes in the film "New", which are vulgar and obscene, catering to the baser instincts of the audience.

(3) The countless number of dual meaning dialogues in the film show the sexual perversions and the use of child artiste in the lead role, depicting child abuse.

(4) The direction given by the Central Government to the Central Board of Film Certification that no picture shall be certified for public exhibition, which will lower the moral standards of those who see it, has not been given due consideration by the Board, while certifying the film.

(5) The film "New" does not provide a clean and healthy entertainment. The guidelines given in the Cinematograph Act,1952, that the scenes, showing children being subjected to any form of child abuse or tending to encourage and justify smoking, are not to be shown and human sensibilities should not be allowed to be offended by vulgarity and obscenity and dual meaning words, obviously catering to the baser instincts of the viewers are not allowed, have not been followed by the Censor Board, even though the film depraves the morality of the audience.

(6) The Censor Board has failed to follow the principle that it should step in firmly and insist that the film being released as a message is meant to improve the values of life and should see that the law against obscenity protects the society, particularly the young, from harmful consequences of the anti-social and commercial activities of the peddlers of pornographic materials.

(7) The Censor Board is duty bound to see that the young and the impressionable are guarded against subtle machinations of pseudo artistes and producers, as the young persons try to emulate or imitate what they have seen in the movies. But, in this case, the Censor Board has failed to take into consideration the guidelines, given by the Government, as well as the principles, laid down by the Supreme Court.

(8) Despite number of vulgar and obscene scenes, the Censor Board, second respondent, has sanctioned certificate to this film for public exhibition, unmindful of the evil influence that it could have on the young minds.

(9) As pointed out by the Supreme Court in 1989 (2) SUPREME COURT CASES 574 (S.RANGARAJAN v. P.JAGJIVAN RAM AND OTHERS), this is a land of Adi-guru Sankaracharya, Ramanujacharya, Madhwacharya, Chaitanya Maha Prabhu, Swami Rama Krishna Paramhamsa, Guru Nanak, Sant

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Kabir, Thiruvalluvar and Mahatma Gandhi, who have all enlightened our path. In the name of new innovation, if we throw away the teaching of these great people, which is a general human morality and wisdom, we are throwing away our ethical standards and the tradition of our country into the winds. Of course, the Censor Board need not have an orthodox or conservative look, but the Board must display more sensitivity to motives, which will have a markedly deleterious effect to lower the moral standards of the viewers, especially the young. In this case, we are of the definite opinion, that the film has been picturised purposely for arousing the sensual feelings of the public, depicting the theme, scenes, sequences and songs, with full of child abuse, vulgarity and obscenity and dialogues giving dual meaning, catering to the baser instincts of the public. In view of the utter violations of the statutory provisions and the guidelines and also in view of the utter failure on the part of the Censor Board to take into consideration the general principles and the guidelines while certifying the film, given by the Central Government and the provisions of the Act, the Censor Certificate, which has been issued by the Board to the film "New", has to be held invalid and the same is liable to be revoked.

(10) Immediately after the release of the film, women groups sent petitions after petitions to the Censor Board, complaining about the obscene scenes in the film. The publicity materials have been published through advertisements in various papers and audio cassettes, violating the provisions of the Tamil Nadu (Compulsory Censorship of Film Publicity Materials) Act 25 of 1987 and though it is brought to the notice of the State Government, the State Government has not taken immediate action. Further, the uncensored obscene scenes are screened in the theatres. The adult rated scenes in the film are allowed to be telecast, to enable the children also to view, in spite of the prohibition, contained in The Cable Television Networks (Regulation) Act,1995. With reference to this, a complaint has been given and the police registered a case against the Producer. After release of the film, the Producer attempted to introduce one more song with full of ugly meanings. During the enquiry, the Producer threatened both the Board officers in their rooms and threw away his cell phone towards the head of the lady member. With regard to this also, a case has been registered against Mr.Surya, the Producer. This shows that the Producer has not only produced the picture, exhibiting ugly scenes to the viewers, but created ugly situation, by publishing the publicity materials, without any clearance from the State Government and also created ugly scenes in the Office of the Regional Officer of the Censor Board, by manhandling the Board Members and making an attempt to assault the lady member.

(11) After the arguments were over, the matter was posted for orders. In the meantime, the film "New" has finished its run. Therefore, originally, we thought of disposing of the Writ Petition by simply making an observation that the issuance of Censor Certificate is not valid in law and, as considerable time has passed by, the order

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of revocation is unnecessary. But, when we perused the records, summoned from the Censor Board, and noticed the conduct of the Producer of the film, we are constrained to pass an order, directing the authorities to revoke the certificate issued to the film "New", or else, we would feel that we will be failing in our duty. If we do not give such a direction, it would amount to allowing the BLACK SPOT to be alive for ever, in the history of Tamil Film World.

(12) As indicated above, it conveys only one message, namely, vulgarity and vulgarity alone and nothing more and does not convey any other message; does not educate the public and also does not give a healthy entertainment. On the other hand, the film has been picturised only to show the sexual perversions and child abuse, in order to cater to the baser instincts of the viewers, purely with a commercial purpose. Innovations may be good, but those innovations should not be at the cost of culture and traditions of this great country.

(13) Though The Cable Television Networks (Regulation) Act and the Tamil Nadu (Compulsory Censorship of Film Publicity Materials) Act 25 of 1987 have come into force, as complained by the Censor Board itself, the implementation of those Acts by the State Government is not effective; with the result, uncensored vulgar scenes are displayed in the advertisements and the adult rated films are being shown to the children in television channels. Therefore, the Chief Secretary to the State Government is directed to ensure the proper implementation of these Acts, at least in future.

(14) Already, there are two complaints, given against Mr.Surya, the Producer; one by Srinivasaa Entertainments, detective agency, on behalf of the Central Board of Film Certification, whereupon a case is registered by R1 Mambalam Police Station, Chennai; and the other by Mrs.Vanathi Srinivasan, lady member of the Advisory Board, regarding the assault on her and misbehaviour, on which a case is registered in Crime No.1462 of 2004 on the file of F-3 Nungambakkam Police Station, Chennai, for the offences under Sections 336,353 and 354 IPC. The Commissioner of Police is directed to ensure that those cases are investigated and reports are filed immediately before the Court of Law.

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(15) Therefore, we are constrained to issue a mandamus to first and second respondents, to revoke the Censor Certificate issued to the film "New", and the same is, accordingly, ordered.

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50. With the above directions, this Writ Petition is allowed. No costs. Consequently, the connected W.P.M.P.Nos.29682 and 29683 of 2004 and W.V.M.P.No.1537 of 2004 are closed.

dixit

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Secretary to Government,
Government of India,
Ministry of Information and Broadcasting,
New Delhi.

2.The Regional Officer,
The Central Board of Film Certification,
35, Haddows Road,
Shastri Bhavan,
Chennai- 600 006.

3. The Advocate General,
High Court, Madras.

4. The Commissioner of Police,
Greater Chennai,
Egmore, Chennai 8.

5. The Commissioner of Police,
Chennai.

+ 1 cc to Mr.S.Manikumar, Advocate SR 32873

+ 1 cc to Mr.V.Ramasubramanian, Advocate SR 32853

+ 1 cc to Ms.R.Maheswari, Advocate SR 32936

W.P.No.24430 OF 2004

NG(CO)
SR/5.8.2005

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